

Decision 13-09-040 September 19, 2013

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Warren Edward Foster,

Complainant,

vs.

Sprint Telephony PCS, LP (U3064C),

Defendant.

(ECP)  
Case 13-06-006  
(Filed June 10, 2013)

**DECISION APPROVING SETTLEMENT**

**1. Background**

This case involves a dispute between the parties regarding the payment of an early termination fee (ETF) on an iPhone 5. Complainant asserts that a Sprint salesperson waived the ETF in connection with an upgrade from a Blackberry phone to an iPhone. Defendant denies knowledge of any waiver.

**2. Discussion**

Through an exchange of e-mails after filing of the Expedited Complaint Proceeding, August 9, 2013, Sprint made the following (verbatim) offer of settlement to Foster:

- The Early Termination Fee (ETF) will cease to apply to a cancellation of this account on or after May 8, 2014. Should Mr. Foster cancel the services on phone number 415-971-XXXX now, the ETF would be \$180 (the original

ETF was \$350).<sup>1</sup> Should Mr. Foster, however, decide to continue service for one additional year (through May 8, 2014) no ETF will be assessed.

- Although Sprint's records do not indicate that the Blackberry device was returned, as part of this counter proposal acceptance, Mr. Foster can retain both the Blackberry and iPhone5 devices.

To date, Foster has not responded either to Sprint's e-mail that contained this offer or to a follow-up e-mail from the assigned Administrative Law Judge requesting his response. Sprint's offer effectively meets the demands of the complaint, for which reason Foster's silence will be treated as acceptance for purposes of this opinion.

### **3. Assignment of Proceeding**

Catherine J.K. Sandoval is the assigned Commissioner and Karl J. Bemederfer is the assigned Administrative Law Judge (ALJ) in this proceeding.

## **O R D E R**

**IT IS ORDERED** that:

1. The Early Termination Fee (ETF) will cease to apply to a cancellation of services on complainant's phone number 415-971-XXXX on or after May 8, 2014. Should Mr. Foster cancel services on that phone number prior to that date, the ETF will be \$180.

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<sup>1</sup> The last four digits of Mr. Foster's telephone number are deleted for confidentiality purposes.

2. Mr. Foster may retain both the Blackberry and iPhone5 devices.
3. This proceeding is closed.

This order is effective today.

Dated September 19, 2013, at San Francisco, California.

MICHAEL R. PEEVEY

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

CARLA J. PETERMAN

Commissioners